

NTSB Order No. EA-5259

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of November, 2006

Docket SE-17279

7786A

In his petition, respondent registers his general disagreement with our prior decision. He argues that we committed factual errors and reached erroneous conclusions, but most of these claims are based on a misreading of our opinion.¹ Beyond this, respondent primarily argues that there was an emergency that allowed and required him to deviate from the regulations and perform the maneuvers that he did. He continues to argue that what he did was reasonable. Respondent's arguments were considered and rejected both by the law judge and by us in our earlier decision, and they fail to give us reason to change our prior conclusions.

The un rebutted evidence established that when respondent took the controls there was time and altitude to safely avoid the other aircraft and do a go-around. Respondent had the responsibility to see and avoid the other aircraft and avoid a collision hazard regardless of the other aircraft's alleged failure to respond to his radio calls, as respondent had no doubt as to the other aircraft's intention to continue slowly down the runway and ultimately turn onto a taxiway. Respondent banked and turned right and "buzzed" the aircraft on the ground. Transcript at 31.

We disagree with respondent's contention that an obstructed runway with insufficient distance to land safely constitutes an emergency. Respondent ignores the possibility of safely

¹ For example, he states that it was error for us to find that he banked right and overflowed the other aircraft, which was then on the taxiway, when we also state that the other aircraft was still partially on the runway. The latter statement appears first in our decision and the former statement follows it naturally. The other aircraft moved from partially on the runway to the taxiway while respondent was maneuvering his aircraft in the incident sequence.

Respondent also argues that the aircraft was only 20 feet above the runway when he took the controls and therefore had little choice in his actions, but the weight of the testimony (one of the gentlemen in the other aircraft and the pilot in respondent's aircraft) supports the finding that the aircraft was at 100 feet when he took the controls and began to turn in the direction of the taxiway, at which point he apparently lost altitude before he began his climb.

Respondent accurately observes, however, that in our original opinion we did not correctly describe the two aircraft involved in the incident. We have corrected our original opinion to reflect that respondent was flying a Cessna 177 Cardinal, and the aircraft on the ground was a Cessna 182.

performing a go-around.² The law judge found as a matter of fact, based on his weighing of contradictory testimony, that respondent deliberately came within a wingspan of the other aircraft. This situation was of respondent's own making, and he may not therefore take advantage of regulatory waivers available when there is a true emergency not caused by the pilot. Administrator v. Moore, NTSB Order No. EA-4929 (2001).

Respondent's motion is also styled, in the alternative, as a motion to stay the effectiveness of our decision affirming the 180-day suspension of respondent's commercial pilot certificate in Order No. EA-5228. The Board's policy with respect to stays of orders pending judicial appeals was summarized in Administrator v. Todd, NTSB Order No. EA-4399 (1995), in which we denied a request for stay of a 180-day suspension:

We generally grant a stay when a suspension of less than six months [180 days] is affirmed, and consistently deny stays in cases involving certificate revocation because revocation incorporates a conclusion that an airman lacks the qualifications required of a certificate holder. Cases involving suspensions of six months or more are evaluated on a case-by-case basis, considering the seriousness of the violations.

See also, Administrator v. Powell, NTSB Order No. EA-4328 (1995); and Administrator v. Auburn Flying Service, 5 NTSB 587 (1985), in which requests for stays of 180-day suspensions were also denied. Respondent provides no argument in support of his request for a stay, and, therefore, on the basis of the hearing record which contains credited percipient witness testimony that respondent deliberately "buzzed" the Cessna 182, we think the seriousness of the FAR violations counsel against a stay. Respondent's motion for a stay is, therefore, denied.

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for reconsideration and motion for stay of NTSB Order No. EA-5228, served June 8, 2006, are denied.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN and HIGGINS, Members of the Board, concurred in the above order.

² It is no answer to say that the regulations direct that in this instance one should turn to the right. The regulations clearly do not contemplate doing so in a manner less than sufficient to pass "well clear" of another aircraft.